IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL COPY

No. 74-5369

WILLIE J. DANIEL

VERSUS

STATE OF LOUISIANA

Appeal from the Supreme Court
of the State of Louisiana

MOTION TO DISMISS

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

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WOODROW W. ERWIN
DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

JULIAN J. RODRIGUE
ASSISTANT DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

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Now into Court comes the State of Louisiana, through the undersigned Assistant Attorney General of the State of Louisiana, and pursuant to Rule 16 of the Rules of the Supreme Court of the United States moves this Honorable Court to dismiss the appeal in the above numbered and entitled cause of action for the following reason, to-wit:

The identical issues were briefed and argued to the Court on October 16, 1974 in Taylor v. Louisiana, No. 73-5744. The Taylor case was argued in tandem with Edwards v. Healy, No. 73-759 which involved substantially similar issues.

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VERSUS

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The identical issues were briefed and argued to the Court on October 16, 1974 in Taylor v. Louisiana, No. 73-5744. The Taylor case was argued in tandem with Edwards v. Healy, No. 73-759 which involved substantially similar issues. Healy was a direct appeal from a three-judge court in the Eastern District of Louisiana that had declared unconstitutional Art. 7, Section 41 of the 1921 Constitution of Louisiana, LSA R.S. 13:3055, and Art. 402 of the Louisiana Code of Criminal Procedure. The three-judge court in Healy also

overruled Hoyt v. Florida, 368 U. S. 57 (1961).

All three of these cases necessarily relate to the existence of Louisiana laws exempting women from service on juries. Pursuant to Act 2 of 1972 of the Louisiana Legislature, a constitutional convention convened on January 5, 1973, for the purpose of framing a new constitution for the State of Louisiana. The constitution drafted by this convention was submitted to and adopted by the citizens of Louisiana at a special election held on April 20, 1974. The new constitution becomes effective at midnight on December 31, 1974. Article V. Section 33 of the new constitution relates to juror qualifications and reads as follows:

> (A) Qualifications -- A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.
>
> (B) Exemptions -- The Supreme Court shall provide by rule for exemption of jurors.

This article does not exempt any persons who have reached the age of majority from jury service.

It is thus apparent that there is no occasion for this Court to pass upon questions which have relevance only to state constitutional and statutory provisions that have been abandoned.

See Supplemental Brief of Appellants Suggesting

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>
> This article does not exempt any persons who have reached the age of majority from jury service.

It is thus apparent that there is no occasion for this Court to pass upon questions which have relevance only to state constitutional and statutory provisions that have been abandoned.

See Supplemental Brief of Appellants Suggesting That The Cause in Moot in Edwards v. Healy, No. 73-759 filed October 15, 1974; Second Supplemental Brief in Edwards v. Healy, No. 73-759 filed November 20, 1974 and letter to the Honorable Michael Rodak, Jr., Clerk of the Supreme Court of

the United States, In RE Edwards v. Healy, dated December 6, 1974.

For this reason, appellants suggest that the issues sought to be raised will be moot, and that the appeal should be dismissed on that ground. Furthermore, the appellant in the instant case has made no showing of prejudice by the exclusion of women from the jury. As this Court stated in Tucker v. Michigan, _____ U. S. _____, 94 S. Ct. 2357 (1974), "... the law does not require that a defendant receive a perfect trial, only a fair one ..." 94 S. Ct. at 2365.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

WOODROW W. ERWIN
DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

JULIAN J. RODRIGUE
ASSISTANT DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

BY: _____
KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
STATE OF LOUISIANA
7TH FLOOR
234 LOYOLA AVENUE
NEW ORLEANS, LOUISIANA 70112

OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF LOUISIANA

VS. NO. 74-5369

WILLIE J. DANIEL

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 53, paragraph 1, of the Rules of this Court, motion is hereby made that petitioner be allowed to proceed in forma pauperis. Petitioner affidavit will be sent under separate cover and counsel for petitioner requests that it be attached to this motion.

RESPECTFULLY SUBMITTED:

Roy L. Wood

Roy L. Wood
Attorney for Willie Daniel
P.O. Box 715, Amite, Louisiana
504-748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, appellant, and a member of the bar of the United States Supreme Court, hereby certifies that I have mailed, postage pre-paid, first class mail, a copy of the foregoing motion to Mr.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 53, paragraph 1, of the Rules of this Court, motion is hereby made that petitioner be allowed to proceed in forma pauperis. Petitioner affidavit will be sent under separate cover and counsel for petitioner requests that it be attached to this motion.

RESPECTFULLY SUBMITTED:

Roy L. Wood

Roy L. Wood
Attorney for Willie Daniel
P.O. Box 715, Amite, Louisiana
504-748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, appellant, and a member of the bar of the United States Supreme Court, hereby certifies that I have mailed, postage prepaid, first class mail, a copy of the foregoing motion to Mr. Julian Rodrigue, Assistant District Attorney, Parish of St. Tammany, Covington, Louisiana, by mailing same to his office and to William J. Guste, Jr., Attorney General, State of Louisiana, by mailing same to his office in the State Capitol Building, Baton Rouge, Louisiana. I further certify that all parties required to be served have been served.

Amite, Louisiana, this 3rd day of October, 1974.

Roy L. Wood

Roy L. Wood

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF LOUISIANA *

VERSUS * NO. 74 - 5369

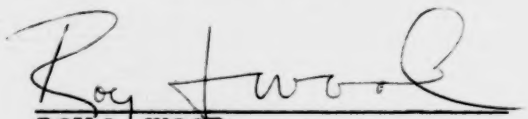
WILLIE J. DANIEL *

****

TO THE HONORABLE CLERK OF THE SUPREME COURT OF THE UNITED STATES

Please enter my appearance as counsel for the Appellant, Willie J. Daniel.

RESPECTFULLY SUBMITTED:



ROY L. WOOD
Post Office Box 715
Amite, Louisiana 70422
(504) 748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, Appellant, and a member of the Bar of the United States Supreme Court, hereby certify that I have mailed, postage prepaid, first class mail, a copy of the above to Mr. Julian A. Rodrigue, Assistant District Attorney for the Parish of St. Tammany, by mailing same to his office, and to William J. Guste, Jr., Attorney General of the State of Louisiana, by mailing to his office in the State Capitol Building, Baton Rouge, Louisiana. I further certify that all parties required

to be served have been served.

Amite, Louisiana, this 30th day of September, 1974.

Roy L. Wood

ROY L. WOOD

IN THE SUPREME COURT OF THE UNITED STATES

74 - 5369

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF LOUISIANA

-VERSUS-

WILLIE J. DANIEL

APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

ROY L. WOOD
Attorney for Appellant
P. O. Box 715
Amite, Louisiana 70422

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I. INTRODUCTION

This is an appeal from the final judgment of the Supreme Court of Louisiana of July 16, 1974 affirming the judgment of conviction and sentence of the appellant for the crime of armed robbery.

II. OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported at 297 So. 2d 417 (1974). (See Appendix A)

III. JURISDICTION

Willie J. Daniel was tried before a jury of the 22nd Judicial District Court for the Parish of St. Tammany on a charge of armed robbery (La. R.S. 14:64). On July 16, 1974 the Supreme Court of Louisiana entered a final judgment affirming the judgment of conviction and sentence of the appellant. On September 26, 1974 the appellant filed a Notice of Appeal to the United States Supreme Court with the Clerk of the Louisiana Supreme Court.

This appeal is taken pursuant to 28 U.S.C. § 1257(2). In the trial court the defendant moved to quash the petit jury venire on the grounds that the provisions of Louisiana law (La. Const. Art. 7 § 41 (1921) and Louisiana Code of Criminal Procedure Article 402) which provide an exemption from jury service for members of the female sex unless they file a written declaration indicating a desire to be subject to such service, violate the defendant's rights to Due Process of Law as guaranteed by the United States Constitution. The trial court overruled the motion to quash and the Supreme Court of Louisiana affirmed. Cases believed to sustain the jurisdiction are as follows:

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This appeal is taken pursuant to 28 U.S.C. § 1257(2). In the trial court the defendant moved to quash the petit jury venire on the grounds that the provisions of Louisiana law (La. Const. Art. 7 § 41 (1921) and Louisiana Code of Criminal Procedure Article 402) which provide an exemption from jury service for members of the female sex unless they file a written declaration indicating a desire to be subject to such service, violate the defendant's rights to Due Process of Law as guaranteed by the United States Constitution. The trial court overruled the motion to quash and the Supreme Court of Louisiana affirmed. Cases believed to sustain the jurisdiction are as follows: Peters v. Kiff, 92 S. Ct. 2163 (1972); Reed v. Reed, 92 S. Ct. 251 (1971);

Frontiero v. Richardson, 93 S. Ct. 1764 (1973); State of Louisiana v. Billy J. Taylor, No. 73-5744; and State of Louisiana v. Healy, No. 73-759.

IV. STATE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

La. Const. Art. 7 § 41 (1921):

> "The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service."

La. Code of Criminal Procedure Art. 402:

> "A woman shall not be selected for jury service unless she has previously filed with the clerk of court, of the parish in which she resides, a written declaration of her desire to be subject to jury service."

V. QUESTIONS PRESENTED

A. Whether La. Const. Art. 7 § 41 and La. Code of Criminal Procedure Art. 402 in providing an automatic exemption for all women from jury service violate the Sixth and Fourteenth Amendments of the United States Constitution?

B. Whether the appellant, a male, has been deprived of an impartial jury and fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution by reason of the systematic exclusion of women from the jury selection process governed by La. Const. Art. 7 § 41 and La. Code of Criminal Procedure Art. 402?

VI. STATEMENT OF THE CASE

The appellant, a male, was convicted of armed robbery on November 20, 1973 by a jury in St. Tammany Parish. He was sentenced to serve sixty (60) years.

A motion to quash the petit jury venire was filed in the trial court on the grounds that woman jurors were systematically excluded from the petit jury and that this violated the appellant's rights as guaranteed by the United States Constitution. The motion was denied and on appeal the same objection was urged by bill of exception. The Louisiana Supreme Court affirmed the conviction.

In its opinion, the Louisiana Supreme Court stated:

> "Defendant alleges that the lower court committed error by overruling the defendant's Motion to Quash the petit jury venire on the ground that women were systematically excluded from the jury. See LSA-Const. Art. 7, § 41; LSA-C. Cr. P. Art. 402. Relying upon the decisions of the United States Supreme Court in Hoyt v. Florida, 368 U.S. 57, 82 S. Ct. 159, 7 L.Ed. 2d 118 (1961), this Court has often held that the jury selection method here attacked is valid. See State v. Davis, La., 284 So. 2d 896 (1973); State v. Womack, La., 283 So. 2d 708 (1973), and the cases therein cited. We adhere to these holdings until the United States Court has again spoken on the subject.
>
> "This Bill is without merit."

VII. THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

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A.

This appeal raises the question whether the trial of a male defendant by a jury from which women were intentionally and arbitrarily excluded is in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

In analogous situations on a claim of exclusion of a class from jury

A motion to quash the petit jury venire was filed in the trial court on the grounds that woman jurors were systematically excluded from the petit jury and that this violated the appellant's rights as guaranteed by the United States Constitution. The motion was denied and on appeal the same objection was urged by bill of exception. The Louisiana Supreme Court affirmed the conviction.

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VII. THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

A.

This appeal raises the question whether the trial of a male defendant by a jury from which women were intentionally and arbitrarily excluded is in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

In analogous situations on a claim of exclusion of a class from jury service, this Court has held that substantial Federal questions are raised.

Strauder v. West Virginia, 100 U.S. 303 (1879); Hernandez v. Texas, 347 U.S. 475 (1954); Smith v. Texas, 311 U.S. 128 (1940); Cassell v. Texas, 339 U.S. 282 (1950); Peters v. Kiff, 92 S. Ct. 2163 (1972).

B.

The precedents established by this Court not only do not support the decision of the Supreme Court of Louisiana, but require its reversal. In Peters v. Kiff, supra, this Court stated at p. 2167-2169:

> "Moreover, the Court has also recognized that the exclusion of a discernable class from jury service injures not only those defendants who belong to the excluded class, but other defendants as well, in that it destroys the possibility that the jury will reflect a representative cross-section of the community.... These principles compel the conclusion that a state cannot, consistent with Due Process, subject a defendant to indictment or trial by a jury that has been selected in an arbitrary and discriminatory manner, in violation of the Constitution and laws of the United States. Illegal and unconstitutional jury selection procedures cast doubt on the integrity of the whole judicial process. They create the appearance of bias in the decision of individual cases, and they increase the risk of actual bias as well.... But the exclusion from jury service of a substantial and identifiable class of citizens has a potential impact that is too subtle and too pervasive to admit of confinement to particular issues or particular cases.... When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable."

C.

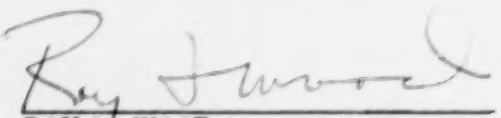
The legal and factual considerations which in 1961 prompted the Court in Hoyt v. Florida, supra, to uphold a similar statute are no longer relevant. Reed v. Reed, 92 S. Ct. 251 (1971) and Frontiero v. Richardson, 93 S. Ct. 1764 (1973).

This case is of far-reaching significance and importance. The Supreme Court of Louisiana purportedly following decisions of this Court, has held that the Due Process clause of the Fourteenth Amendment does not prohibit the intentional exclusion of women from the petit jury. The appellant respectfully submits that this does "violence to the democratic nature of the jury system." Healy v. Edwards, 363 F. Supp. 1110 (E.D. La. 1973).

VIII. CONCLUSION

The questions presented by this appeal are substantial and of broad public importance. Probable jurisdiction should therefore be noted.

RESPECTFULLY SUBMITTED:



ROY L. WOOD
P. O. Box 715
Amite, Louisiana 70422
(504) 748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, Appellant, and a member of the Bar of the United States Supreme Court, hereby certify that I have mailed, postage prepaid, first class mail, a copy of the foregoing Jurisdictional Statement to the United States Supreme Court, to Mr. Julian A. Rodrigue, Assistant District Attorney for the Parish of St. Tammany, by mailing same to his office, and to William J. Guste, Jr., Attorney General

of the State of Louisiana, by mailing at his office in the State Capitol Building, Baton Rouge, Louisiana. I further certify that all parties required to be served have been served.

Amite, Louisiana, this 30th day of September, 1974.

Roy L. Wood

ROY L. WOOD

APPENDIX A

SUPREME COURT OF LOUISIANA

OFFICE OF CLERK

301 Loyola Ave.
Room No. 220
New Orleans, Louisiana 70112

Dear Sir:

Attached you will find copy of opinion in a case which you handled.

The judgment in this case will become final at the expiration of fourteen (14) days from the date appearing on the first page of the opinion, in conformity with the provisions of Section 1 of Rule IX of the Supreme Court, as revised and amended January 1, 1974, unless application for rehearing reaches this office and is filed within the delay provided.

Cordially yours,

Harold A. Moïse, Jr.
Clerk.

STATE OF LOUISIANA

NO. 54,607

V.

SUPREME COURT OF LOUISIANA

WILLIE J. DANIEL

APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY, HONORABLE WALLACE A. EDWARDS, JUDGE.

SANDERS, Chief Justice.

Defendant, Willie J. Daniel, was charged with armed robbery. On November 20, 1973, after a jury trial, he was convicted and sentenced to imprisonment for 60 years. Defendant now appeals. Bills of Exceptions Nos.4 and 5 were neither argued nor briefed by defendant; therefore, they are deemed abandoned. State v. Edwards, 261 La.1014, 261 So.2d 649 (1972). In this Court, defendant relies upon Bills of Exceptions Nos. 1, 2, and 3.

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BILL OF EXCEPTIONS NO.1

Defendant alleges that the lower court committed error by overruling the defendant's Motion to Quash the petit jury venire

NO. 54,607

V.

SUPREME COURT OF LOUISIANA

WILLIE J. DANIEL

APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY, HONORABLE WALLACE A. EDWARDS, JUDGE.

SANDERS, Chief Justice.

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BILL OF EXCEPTIONS NO.1

Defendant alleges that the lower court committed error by overruling the defendant's Motion to Quash the petit jury venire on the ground that women were systematically excluded from the jury.

Barham, J. concurs.

See LSA-Con .Art.7, §41; LSA-C.Cr.P.Art.402. Relying upon the decisions of the United States Supreme Court in Hoyt v. Florida, 368 U.S.57, 82 S.Ct.159, 7 L.Ed.2d 118 (1961), this Court has often held that the jury selection method here attacked is valid. See State v. Davis, La., 284 So.2d 896 (1973); State v. Womack, La., 283 So.2d 708 (1973), and the cases therein cited. We adhere to these holdings until the United States Court has again spoken on the subject.

This Bill is without merit.

BILL OF EXCEPTIONS NO.2

In this Bill, defendant alleges that the lower court committed error by compelling him, over his objection, to wear handcuffs throughout his trial.

Defense counsel moved to have defendant's handcuffs removed; the State objected, and the court heard evidence as to the need for manacles. Captain Wallace Laird, Chief Criminal Deputy of St. Tammany Parish, testified that, while defendant was confined in the parish jail awaiting trial, he was involved in the following custodial offenses: 1) destroying the fixtures in a cell, October 1972; 2) crime against nature in his prison cell, February 1973; 3) simple escape, the bars of his cell having been sawed, June 1973; and 4) attempted simple escape, after locking two jailers in a cell, August 1973. Captain Laird further testified that he thought that, in addition to handcuffs, defendant should have a chain around his waist to prevent him from raising his arms.

The conduct of the trial, including the use of manacles, is within the sound discretion of the trial judge. State v. Tennant, 262 La.

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708 (1973), and the cases therein cited. We adhere to these holdings until the United States Court has again spoken on the subject.

This Bill is without merit.

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In this Bill, defendant alleges that the lower court committed error by compelling him, over his objection, to wear handcuffs throughout his trial.

Defense counsel moved to have defendant's handcuffs removed; the State objected, and the court heard evidence as to the need for manacles. Captain Wallace Laird, Chief Criminal Deputy of St. Tammany Parish, testified that, while defendant was confined in the parish jail awaiting trial, he was involved in the following custodial offenses: 1) destroying the fixtures in a cell, October 1972; 2) crime against nature in his prison cell, February 1973; 3) simple escape, the bars of his cell having been sawed, June 1973; and 4) attempted simple escape, after locking two jailers in a cell, August 1973. Captain Laird further testified that he thought that, in addition to handcuffs, defendant should have a chain around his waist to prevent him from raising his arms.

The conduct of the trial, including the use of manacles, is within the sound discretion of the trial judge. State v. Tennant, 262 La. 941, 265 So.2d 230 (1972); McCloskey v. Boslow, 349 F.2d 119

(4th Cir. 1965). In light of the defendant's violent history, we find no abuse of discretion on the part of the trial judge in requiring defendant to wear handcuffs.

This Bill is without merit.

BILLS OF EXCEPTIONS NO.3

In this Bill, defendant contends that the lower court erred in overruling his objection to the pre-trial line-up and all identification testimony concerning the line-up because defendant was not afforded the right to counsel at the line-up. The line-up took place during the investigative period before counsel was appointed and before the prosecution had been initiated by the filing of the Bill of Information. Under these circumstances, there is no constitutional requirement that an attorney for the defendant be present at the line-up. Kirby v. Illinois, 406 U.S.682, 92 S.Ct.1877, 32 L.Ed.2d 411 (1972), and cases cited therein. We find nothing in the record which indicates that defendant's rights were violated.

Hence, this Bill is without merit.

For the reasons assigned, the conviction and sentence are affirmed.

SUPREME COURT OF THE STATE OF LOUISIANA

Clerk's Office, New Orleans, July 16, 19 74.

Dear Sir:

No rehearing was applied for in the case listed below and the said case is now final.

State v. Daniel

No. 54,607

Yours very sincerely,

Harold A. Moïse, Jr.

APPENDIX C

STATE OF LOUISIANA

VS. NO. 54,607

SUPREME COURT OF LOUISIANA

WILLIE J. DANIEL

NOTICE OF APPEAL

Notice is hereby given that Willie J. Daniel the defendant-appeallant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Louisiana of July 16, 1974, affirming the judgment of conviction, entered on November 20, 1973.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

S/ Roy L. Wood

Roy L. Wood
Attorney for Willie J. Daniel
P.O. 715
Amite, Louisiana

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOtice of Appeal has been mailed to Mr. Julian J. Rodrigue, Assistant District Attorney, Covington, Louisiana, this 26th day of September, 1974, via U.S. Mail, postage pre-paid.

Notice is hereby given that Willie J. Daniel the defendant-appeallant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Louisiana of July 16, 1974, affirming the judgment of conviction, entered on November 20, 1973.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

S/ Roy L. Wood

Roy L. Wood
Attorney for Willie J. Daniel
P.O. 715
Amite, Louisiana

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S/ Roy L. Wood

Roy L. Wood

STATE OF LOUISIANA	*	NUMBER 54,607
VERSUS	*	SUPREME COURT
WILLIE J. DANIEL	*	STATE OF LOUISIANA

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, Appellant, and a member of the Bar of the United States Supreme Court, hereby certify that I have mailed, postage prepaid, first class mail, a copy of the Notice of Appeal to the United States Supreme Court, to Mr. Julian A. Rodrigue, Assistant District Attorney for the Parish of St. Tammany, by mailing same to his office, and to William J. Guste, Jr. Attorney General of the State of Louisiana, by mailing at his office in the State Capital Building, Baton Rouge, Louisiana. I further certify that all parties required to be served have been served.

Amite, Louisiana, this 30th day of September, 1974.

Roy L. Wood

ROY L. WOOD

DANIEL v. LOUISIANA

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

No. 74-5369. Decided January 27, 1975

The decision in Taylor v. Louisiana, 419 U. S. 522, wherein it was held that the Sixth and Fourteenth Amendments require petit juries to be *selected* from a *source* fairly representative of the community and that such requirement is violated by the systematic exclusion of women from jury panels, is not to be applied retroactively, as a matter of federal law, to convictions obtained by juries empaneled prior to the date of that decision. *DeStefano v. Woods*, 392 U. S. 631.

297 So. 2d 417, affirmed.

PER CURIAM.

Appellant Daniel was tried before a jury of the Twenty-second Judicial District Court of Louisiana and convicted of armed robbery on November 20, 1973. The jury that tried appellant was selected from a venire chosen in accordance with the procedures then provided for in La. Const., Art. VII, § 41, and La. Code Crim. Proc., Art. 402. Appellant raised a timely motion to quash the petit jury venire, contending that these procedures violated the Fourteenth Amendment because they resulted in the systematic exclusion of women from the petit jury venire from which his jury was chosen. His motion to quash was denied and this denial was affirmed on appeal to the Louisiana Supreme Court. 297 So. 2d 417 (1974).

In *Taylor* v. *Louisiana*, 419 U. S. 522 (1975), we held that the Sixth and Fourteenth Amendments command that petit juries must be selected from a source fairly representative of the community. In this case, it is not disputed that the jury venire from which appellant's petit jury was chosen did not constitute a fair cross sec-

tion of the community. The question is whether our decision in *Taylor* v. *Louisiana* is to be applied retroactively to other defendants whose opportunity to raise a timely objection to the jury-selection procedures had passed as of the date of our decision in *Taylor*. We hold that *Taylor* is not to be applied retroactively, as a matter of federal law, to convictions obtained by juries empaneled prior to the date of that decision.

As we stated in *Taylor* v. *Louisiana*, *supra*, "until today no case had squarely held that the exclusion of women from jury venires deprives a criminal defendant of his Sixth Amendment right to trial by an impartial jury drawn from a fair cross section of the community." Given this statement, as well as the doctrinal underpinnings of the decision in *Taylor*, the question of the retroactive application of *Taylor* is clearly controlled by our decision in *DeStefano* v. *Woods*, 392 U. S. 631 (1968), where we held *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), to be applicable only prospectively. The three relevant factors, as identified in *Stovall* v. *Denno*, 388 U. S. 293, 297, are

> "(a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards."

In *Taylor*, as in *Duncan*, we were concerned generally with the function played by the jury in our system of criminal justice, more specifically the function of preventing arbitrariness and repression. In *Taylor*, as in *Duncan*, our decision did not rest on the premise that every criminal trial, or any particular trial, was necessarily unfair because it was not conducted in accordance with what we determined to be the requirements of the Sixth Amendment. In *Taylor*, as in *Duncan*, the reli-

ance of law enforcement officials and state legislatures on prior decisions of this Court, such as *Hoyt* v. *Florida*, 368 U. S. 57 (1961), in structuring their criminal justice systems is clear. Here, as in *Duncan*, the requirement of retrying a significant number of persons were *Taylor* to be held retroactive would do little, if anything, to vindicate the Sixth Amendment interest at stake and would have a substantial impact on the administration of criminal justice in Louisiana and in other States whose past procedures have not produced jury venires that comport with the requirement enunciated in *Taylor*.

The judgment is affirmed.

It is so ordered.

MR. JUSTICE DOUGLAS, dissenting.

The decision in *Taylor* v. *Louisiana* was applied retroactively to the trial and conviction in that case, not prospectively. I see no equities that permit retroactivity of the new ruling in *Taylor* and that disallow it here. My view has been that we should make our constitutional ruling retroactive in all cases if we make it retroactive in one. We can never know what differences, if any, would have resulted if a trial had been held pursuant to constitutional standards of procedural due process. I have recorded my dissents in other like situations, *e. g.*, *Stovall* v. *Denno*, 388 U. S. 293, 302–303; *Linkletter* v. *Walker*, 381 U. S. 618, 640; *Johnson* v. *New Jersey*, 384 U. S. 719, 736; *Whisman* v. *Georgia*, 384 U. S. 895.* When *Miranda* v. *Arizona*, 384 U. S. 436, was decided we applied its ruling to three other cases in which

*See also *Tehan* v. *United States ex rel. Shott*, 382 U. S. 406, 419; *DeStefano* v. *Woods*, 392 U. S. 631, 635; *Fuller* v. *Alaska*, 393 U. S. 80, 82; *Desist* v. *United States*, 394 U. S. 244, 255; *Jenkins* v. *Delaware*, 395 U. S. 213, 222; *Mackey* v. *United States*, 401 U. S. 667, 713; *Adams* v. *Illinois*, 405 U. S. 278, 286; *Michigan* v. *Payne*, 412 U. S. 47, 58; *Michigan* v. *Tucker*, 417 U. S. 433, 464.

we also granted certiorari, *id.*, at 499. We had held 40 additional cases raising the same point; and when *Miranda* was decided we denied certiorari in each of them, 384 U. S. 1020–1025. I dissented from these denials saying:

> "MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted in these cases and the judgments below reversed. He would remand the cases for a new trial, it being clear from the records that the principles announced in *Miranda* v. *Arizona*, *ante*, p. 436, were not applied. He sees no reason for discriminating against these petitioners, all of these cases having come here on direct review and being of the same vintage as *Miranda* v. *Arizona*." 384 U. S., at 1020–1021.

Here, as in the case of *Miranda*, it is largely chance that we take for review one of several or many cases presenting the same issue. It is, I think, highly unfair to make the opinion in the case we take retroactive in that appellant's case but not retroactive in others of the same vintage and pending here. If we sought equal justice for all we would either make all of our constitutional decisions retroactive or all of them prospective only.